

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRED REEVES,

Plaintiff,

Case No. 1:06-cv-896

v.

Honorable Richard Alan Enslen

BASIL WOLEVER, *et al.*,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On January 31, 2007, the Court entered an order denying Plaintiff leave to proceed *in forma pauperis* because he has three strikes within the meaning of 28 U.S.C. § 1915(g). In denying him leave to proceed *in forma pauperis*, the Court rejected Plaintiff's argument that he was not required to pay a filing fee under *Owens v. Keeling*, 461 F.3d 763, 773 (6th Cir. 2006). In *Owens v. Keeling*, the Sixth Circuit held that "when a prisoner 're-files' a complaint raising the same prison-conditions claims as a complaint that was initially dismissed without prejudice for failure to exhaust under the PLRA . . . the prisoner need not pay an additional filing fee under 28 U.S.C. § 1914(a)." Plaintiff claims that the instant action is a re-filing of *Reeves v. Wolever et al.*, 5:04-cv-141 (W.D. Mich.). In that case, the Court adopted the magistrate judge's report and recommendation and granted Defendants' motion to dismiss the complaint under the total exhaustion rule. Plaintiff asserts claims against ten individuals in this case that were not sued in the previous case; therefore, the Court concluded that the instant case was not a re-filing of a previous action within the meaning of *Owens*.

Plaintiff now moves to amend his Complaint to dismiss the ten individuals that were not sued in the previous action. Plaintiff is free to amend his complaint once as a matter of course before a responsive pleading is filed. FED. R. CIV. P. 15(a). As a result of his amendment, the Court will dismiss the following ten Defendants without prejudice: Gardner, Grider, Ray, Vroman, Groves, Thomas, Perteet, Goodson, Macaully and Schluckbier.

Because Plaintiff's Amended Complaint asserts the same claims against the same Defendants named in Case No. 5:04-cv-141, he is not required to pay a filing fee in this case pursuant to *Owens*. Accordingly, the Court will vacate the Order denying Plaintiff leave to proceed *in forma pauperis*. The Court will enter a separate order for service of the Amended Complaint upon Defendants Wolever, Datema, Smith, Mowatt, Mawer and Jaramillo.¹ Therefore:

IT IS HEREBY ORDERED that Plaintiff's Motion to Amend the Complaint (Dkt. No. 6) is **GRANTED**.

IT IS FURTHER ORDERED that Defendants Gardner, Grider, Ray, Vroman, Groves, Thomas, Perteet, Goodson, Macaully and Schluckbier are **DISMISSED without prejudice**.

IT IS FURTHER ORDERED that the Order denying Plaintiff leave to proceed *in forma pauperis* (Dkt. No. 4) is **VACATED**. Plaintiff may proceed in this case without payment of the filing fee.

DATED in Kalamazoo, MI:
May 14, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

¹The Court is unable to order service upon the five "John Doe" Defendants.